

1 Anna Y. Park, CA SBN 164242
2 Sue J. Noh, CA SBN 192134
3 Connie K. Liem, TX SBN 791113
4 Nakkisa Akhavan, CA SBN 286260
5 U.S. EQUAL EMPLOYMENT
6 OPPORTUNITY COMMISSION
7 255 East Temple Street, Fourth Floor
8 Los Angeles, CA 90012
9 Telephone: (213) 894-1068
10 Facsimile: (213) 894-1301
11 Email: lado.legal@eeoc.gov

7 Attorneys for Plaintiff
8 U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

10 (additional counsel listed on next page)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

14 U.S. EQUAL EMPLOYMENT) Case No.: 2:13-CV- 01754-GMN-VCF
OPPORTUNITY COMMISSION,)
15 Plaintiff,) **CONSENT DECREE**
16) **AND [PROPOSED] ORDER**
17 vs.)
18 BANK OF AMERICA CORPORATION;)
19 BANK OF AMERICA, N.A.; and Does 1-10)
inclusive;)
20 Defendants) **Gloria M. Navarro**
21) **Chief U.S. District Judge**

1 **McGUIREWOODS LLP**
2 Michael D. Mandel (admitted *pro hac vice*)
3 California Bar No. 216934
4 Bethany A. Pelliconi (admitted *pro hac vice*)
5 California Bar No. 182920
6 Lindsay L. Ryan (admitted *pro hac vice*)
7 California Bar No. 258130
8 Sean M. Sullivan (admitted *pro hac vice*)
9 California Bar No. 286368
10 1800 Century Park East, 8th Floor
11 Los Angeles, CA 90067-1501
12 mmandel@mcguirewoods.com
13 bpelliconi@mcguirewoods.com
14 lryan@mcguirewoods.com
15 ssullivan@mcguirewoods.com

16 Attorneys for Defendant Bank of America, N.A.

17 Sheri M. Thome, Esq.
18 Nevada Bar No. 008657

19 Chad C. Butterfield, Esq.
20 Nevada Bar No. 010532

21 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**

22 300 S. Fourth Street, 11th Floor
23 Las Vegas, Nevada 89101
24 (702) 727-1400; FAX (702) 727-1401
25 sheri.thome@wilsonelser.com
26 chad.butterfield@wilsonelser.com

27 Attorneys for Defendant Bank of America, N.A.

I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC" or the "Commission"), and Defendant Bank of America, N.A. ("BANA"), hereby stipulate and agree to entry of this Consent Decree to resolve the Commission's lawsuit, filed under Title I of the Americans with Disabilities Act of 1990, as amended (the "ADA") and Title I of the Civil Rights Act of 1991. The EEOC and BANA are referred to collectively as the "parties."

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

10 A. The parties to this Consent Decree ("Decree") are the EEOC and BANA. This Decree
11 shall be binding on and enforceable against BANA and its successors and assigns. The parties
12 have entered into this Decree for the purpose of resolving a disputed claim so as to avoid the
13 expense, time, and uncertainty of further litigation.

III.

RECITALS

16 A. The EEOC commenced the above-captioned action on September 25, 2013, on behalf of
17 Charging Party Melchora Lee ("Lee"), a deaf individual formerly employed by BANA. In the
18 Complaint, the EEOC asserted claims against Defendant Bank of America Corporation ("BAC"),
19 which never employed Lee. The EEOC later filed a First Amended Complaint to add BANA as
20 a Defendant. BANA represents that it has authority to bind itself to, and implement on its own
21 behalf all of the provisions set forth in this Decree. The EEOC hereby agrees to dismiss BAC
22 from this action, with prejudice.

23 B. BANA makes no admissions regarding any claims or defenses raised during the litigation
24 by entering into this Decree.

25 C. Lee is a high school graduate who communicates using written communications and sign
26 language, but she is not fluent in American Sign Language ("ASL"). BANA hired Lee in 1998.
27 Her duties required her to empty out the contents of disposable, plastic deposit bags and process
28 the deposits by inputting account numbers and deposit amounts into the computer. BANA

1 terminated Lee's employment in 2010 after several instances when she failed to empty out the
2 contents of the deposit bags that were given to her for processing, resulting in customer deposits
3 being discarded in the trash. The parties agree that Lee's termination was based on legitimate,
4 nondiscriminatory reasons. The EEOC contends that the interactive process was ineffective.

5 **IV.**

6 **RELEASE OF CLAIMS**

7 A. This Decree fully and completely resolves all issues, claims and allegations by the EEOC
8 that have been raised or could have been raised in the Complaint and First Amended Complaint
9 filed in the above-captioned case as against all parties.

10 B. Nothing in this Decree shall be construed to preclude any party from bringing suit to
11 enforce this Decree in the event that any party hereto fails to perform the promises and
12 representations contained herein.

13 C. Nothing in this Decree shall be construed to limit or reduce any obligations to comply
14 fully with the ADA or any other federal employment statute.

15 D. This Decree in no way affects the EEOC's right to bring, process, investigate or litigate
16 other charges that may be in existence or may later arise against any party in accordance with
17 standard EEOC procedures.

18 **V.**

19 **JURISDICTION**

20 A. The Court has jurisdiction over the parties and the subject matter of this lawsuit. The
21 Complaint asserts claims that, if proven, would authorize the Court to grant the equitable relief
22 set forth in this Decree.

23 B. The terms and provisions of this Decree are fair, reasonable and just.

24 C. This Decree conforms to the Federal Rules of Civil Procedure and any other federal
25 statute(s), and is not in derogation of the rights or privileges of any person.

26 D. The Court shall retain jurisdiction of this action during the duration of the Decree for the
27 purposes of entering all orders, judgments and decrees that may be necessary to implement the
28 relief provided herein.

1 VI.

2 **EFFECTIVE DATE AND DURATION OF DECREE**

3 A. The provisions and agreements contained herein are effective immediately upon the date
4 which this Decree is entered by the Court ("the Effective Date").

5 B. Except as otherwise provided herein, this Decree shall remain in effect for two (2) years
6 after the Effective Date.

7 VII.

8 **MODIFICATION AND SEVERABILITY**

9 A. This Decree constitutes the complete understanding of the parties with respect to the
10 matters contained herein. No waiver, modification or amendment of any provision of this
11 Decree will be effective unless made in writing and signed by an authorized representative of
12 each of the parties.

13 B. If one or more provisions of the Decree are rendered unlawful or unenforceable, the
14 parties shall make good faith efforts to agree upon appropriate amendments to this Decree in
15 order to effectuate the purposes of the Decree. In any event, the remaining provisions will
16 remain in full force and effect unless the purposes of the Decree cannot, despite the parties' best
17 efforts, be achieved.

18 C. By mutual agreement of the parties, this Decree may be amended or modified in the
19 interests of justice and fairness in order to effectuate the provisions of this Decree.

20 VIII.

21 **COMPLIANCE AND DISPUTE RESOLUTION**

22 A. The parties expressly agree that if the EEOC has reason to believe that BANA has failed
23 to comply with any provision of this Consent Decree, the EEOC may bring an action before this
24 Court to enforce the Decree. Prior to initiating such action, the EEOC will notify BANA and its
25 legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the
26 particular provision(s) of the Consent Decree that the EEOC believes BANA has breached along
27 with the reason and basis of the alleged breach. Absent a showing by either party that the delay
28 will cause irreparable harm, BANA shall have thirty (30) days to attempt to resolve or cure the

1 breach, however, the parties can agree to extend this period upon mutual consent.

2 B. The parties agree to cooperate with each other and use their best efforts to resolve any
3 dispute referenced in the EEOC notice.

4 C. After thirty (30) days have passed with no resolution or agreement to extend the time
5 further, the EEOC may petition this Court for resolution of the dispute, seeking all available
6 relief, including an extension of the term of the Decree for such period of time as BANA is
7 shown to be in breach of the Decree and the EEOC's costs and attorneys' fees incurred in
8 securing compliance with the Decree.

9 **IX.**

10 **MONETARY AND CLAIMANT SPECIFIC RELIEF**

11 A. **Monetary Relief**

12 1. In settlement of this lawsuit, BANA shall pay Melchora Lee a total of Thirty
13 Thousand Dollars (\$30,000.00) ("Settlement Amount") in monetary relief to resolve this action.

14 2. The parties agree that Lee has no compensable damages for lost income. The
15 Settlement Amount shall be designated as compensation for alleged emotional distress damages
16 and paid by one check made payable to "Melchora Lee." BANA will report the Settlement
17 Amount on a Form 1099.

18 3. Within twenty (20) business days of the Effective Date, BANA shall forward, via
19 Certified U.S. Mail, the Settlement Amount to Lee. Within five (5) business days of the issuance
20 of the Settlement Amount, BANA shall submit a copy of the check and related correspondence
21 to the Regional Attorney, Anna Y. Park, U.S. Equal Employment Opportunity Commission, 255
22 East Temple Street, 4th Floor, Los Angeles, CA 90012.

23 B. **Claimant Specific Relief**

24 BANA will provide a neutral verification of Lee's employment to any prospective
25 employer, provided the request is directed to "The Work Number" at 1.800.367.5690 following
26 the prompts for employment verification or by writing to BANA's Global Human Resources
27 Service Center, PO Box 563910, Charlotte, NC 28256. Such reference will be limited to Lee's
28 name, job title, employment classification (e.g., full or part-time) and dates of hire and last date

1 of employment (without characterization of reason for end of employment).

X.

GENERAL INJUNCTIVE RELIEF

4 | A. Non-Discrimination

BANA and its successors and assigns agree to continue to implement and enforce its non-discrimination policies in a manner that is consistent with the ADA. This includes refraining from engaging in employment practices in violation of the ADA.

8 | B. Non-Retaliation

9 BANA and its successors and assigns, hereby agree to continue to implement and enforce
10 its policies prohibiting retaliation in a manner that is consistent with the ADA, and that it will not
11 engage in, implement or permit any action, policy or practice with the purpose of retaliating
12 against any current or former employee, or job applicant, or either of them, because he or she has
13 in the past, or during the term of this Decree:

1. opposed any practice made unlawful under the ADA;
 2. filed a charge of discrimination alleging such practice;
 3. testified or participated in any manner in any investigation (including without limitation, any internal investigation undertaken by BANA), proceeding in connection with this and/or relating to any claim of an ADA violation;
 4. been identified as a possible witness or claimant in this action;
 5. asserted any rights under this Decree; or
 6. sought and/or received any relief in accordance with this Decree.

XI.

RECORD KEEPING AND REPORTING

A. Document Preservation

For the duration of the Decree, BANA shall maintain such records as are necessary to demonstrate its compliance with this Decree, including but not limited to the documents specifically identified below. BANA will continue to maintain records that track requests for accommodation for the duration of the Decree, identifying by BANA the person number the

1 person requesting the accommodation, the date of the request, the requested accommodation, the
2 person engaging in the interactive process, the reasons for any denials of reasonable
3 accommodations, and the ultimate outcome of the accommodation process. BANA shall
4 continue to review the centralized tracking of accommodations requests to assess training needs
5 and to ensure follow up on whether accommodation requests are adequately provided,
6 particularly with long term employees that may require modification of accommodations
7 requests. Accommodations Services in particular will continue to conduct audits to ensure that
8 the interactive process is adequately being provided where conducted by supervisors and
9 managers.

10 B. Reports

11 For the duration of the Decree BANA shall provide the EEOC with semi-annual
12 summary reports from the Effective Date containing the following information regarding deaf
13 employees working in the State of Nevada:

14 (1) [a] accommodations requested, [b] an identification of the BANA person number
15 of the person requesting the accommodation, [c] the date of the request, [d] the requested
16 accommodation, [e] the person(s) who engaged in the interactive process, [f] the reasons for any
17 denials of reasonable accommodations, and [g] the ultimate outcome of the accommodation
18 process; and

19 (2) [a] complaints regarding disability discrimination or disability harassment, [b] the
20 date(s) of such complaints, [c] the title and BANA person number of the person(s) alleged to
21 have engaged in the discrimination or harassment, [d] the name and title of the person(s) who
22 conducted the investigation into the complaints, [e] the nature of the complaints, [f] the date of
23 the commencement and completion of the investigation into the complaints, [g] a brief
24 description of the investigation (i.e., number of persons interviewed, materials reviewed), [h] the
25 outcome of the investigation and any action taken, and [i] whether previous disability
26 discrimination and/or disability harassment complaints had been made regarding the alleged
27 harasser(s).

28 BANA will submit verification of the dissemination of its policies and procedures.

1 BANA will also verify that it assessed or audited accommodation requests in Nevada by
2 supervisors and managers to ensure that the interactive process was properly conducted. BANA
3 will also submit verification of the trainings set forth herein, a description of the training, and an
4 outline of the curriculum developed for the trainees.

XII.

TRAINING

7 A. BANA agrees that all managers and supervisors will be trained that Accommodations
8 Services shall handle all accommodations issues related to the communication abilities of deaf
9 individuals companywide. Managers and supervisors will be trained to direct all accommodation
10 requests regarding the communication abilities and methods of deaf individuals to
11 Accommodations Services and/or Advice and Counsel, and that decisions will not be made by
12 managers and supervisors regarding such accommodation requests without approval from
13 Accommodations Services and/or Advice and Counsel. Accommodations Services and/or
14 Advice and Counsel may delegate routine accommodation requests from deaf employees, such
15 as scheduling, leave, and ergonomics related requests, to managers and supervisors.

16 B. BANA also agrees to create a training module to not only address the foregoing but also
17 the following:

1. Issues involving the specific communications and particular needs of deaf employees in an employment context. Specifically, the training will address that each deaf employee will have different communication abilities and methods;
 2. That ASL interpreters will be the favored accommodation for addressing essential functions of a job and where it involves any employment actions involving a deaf employee. In that regard, the training modules will also address the use of ASL interpreters for all meetings that involve discussion of terms and conditions of employment that deaf employees are required to attend, even if the employees indicate that they are able to understand written communications;
 3. When, if at all, it is appropriate to use written communications in lieu of an ASL interpreter as a reasonable accommodation for deaf employees;

4. That Accommodations Services will review and assess whether the interactive process of supervisors and managers was properly conducted when it involves a deaf individual.

C. BANA agrees to training its Advice & Counsel and Accommodations Services regarding reasonable accommodation and interactive process on an annual basis. BANA's training will incorporate: (1) BANA's company policy regarding reasonable accommodation requests and Advice & Counsel and Accommodations Services' role in reasonable accommodations; (2) the interactive process, including that it is necessary to communicate with every party involved with a particular accommodation including the employee and the employee's managers and supervisors in order to assess the needs of the employee requesting a reasonable accommodation; (3) that Accommodation Services must monitor accommodations to ensure employees are effectively accommodated and to ensure accountability of all parties involved in the accommodation; and (4) different communication needs of deaf individuals that may be needed to properly engage in the interactive process and to properly accommodate a deaf individual. A summary of the monitoring shall be provided to the EEOC of deaf individuals.

16 D. BANA will direct managers to call the Accommodation Services Team when any
17 changes are proposed in accommodations previously provided to any deaf employees. BANA
18 will also continue to remind managers to encourage employees to utilize the resources available
19 to them to address reasonable accommodation issues, including the Accommodation Services
20 Team and Advice & Counsel Department.

21 E. For the duration of the Decree, BANA will certify to the EEOC on an annual basis that it
22 has complied with the provisions of this section.

XIII.

COSTS OF ADMINISTRATION AND IMPLEMENTATION OF CONSENT DECREE

BANA shall bear all costs associated with its own obligations under this Consent Decree.

XIV.

COSTS AND ATTORNEYS' FEES

Each party shall bear its own costs of suit and attorneys' fees.

xv.

MISCELLANEOUS PROVISIONS

- 6 A. During the term of this Consent Decree, BANA shall provide any potential successor-in-
7 interest with a copy of this Consent Decree within a reasonable time of not less than thirty (30)
8 days prior to the execution of any agreement for acquisition or assumption of control of any or
9 all of BANA's facilities, or any other material change in corporate structure, and shall
10 simultaneously inform the EEOC of same.

11 B. During the term of this Consent Decree, BANA and its successors shall assure that each
12 of their officers, managers and supervisors is aware of any term(s) of this Decree which may be
13 related to his/her job duties.

14 C. Unless otherwise stated, all notices, reports and correspondence required under this
15 Decree shall be delivered to the attention of the Regional Attorney, Anna Y. Park, U.S. Equal
16 Employment Opportunity Commission, Los Angeles District Office, 255 E. Temple St., 4th Fl.,
17 Los Angeles, CA 90012.

18 D. The parties agree to entry of this Decree and judgment subject to final approval by the
19 Court.

ORDER

GOOD CAUSE APPEARING:

The Court hereby retains jurisdiction and the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is fair and adequate.

IT IS SO ORDERED.

Hon. Gloria M. Navarro
United States Chief District Judge
DATED this 6 day of April , 2016.

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Date: March 8, 2016

**Anna Y. Park
Regional Attorney**

Sue J. Noh
Supervisory Trial Attorney

**Connie K. Liem
Nakkisa Akhavan
Trial Attorneys**

Attorneys for Plaintiff EEOC

MCGUIREWOODS LLP

Date: March ___, 2016

Michael Mandel
Bethany Pelliconi
Lindsay Ryan
Sean Sullivan

Attorneys for Defendant
Bank of America, N.A.

1
2 **U.S. EQUAL EMPLOYMENT**
3 **OPPORTUNITY COMMISSION**

4 Date: March , 2016

5 Anna Y. Park
6 Regional Attorney

7 Sue J. Noh
8 Supervisory Trial Attorney

9 Connie K. Liem
10 Nakkisa Akhavan
11 Trial Attorneys

12 Attorneys for Plaintiff EEOC

13 **MCGUIREWOODS LLP**

14 Date: March 8, 2016

15 
16 Michael Mandel
17 Bethany Pelliconi
18 Lindsay Ryan
19 Sean Sullivan

20 Attorneys for Defendant
21 Bank of America, N.A.

1 Anna Y. Park, CA SBN 164242
2 Sue J. Noh, CA SBN 192134
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5 U.S. EQUAL EMPLOYMENT
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7 255 East Temple Street, Fourth Floor
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Facsimile: (213) 894-1301
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11 (additional counsel listed on next page)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

15 U.S. EQUAL EMPLOYMENT Case No.: 2:13-CV- 01754-GMN-VCF
16 OPPORTUNITY COMMISSION,)
17 EEOC,)
18 vs.)
19 BANK OF AMERICA CORPORATION;)
20 BANK OF AMERICA, N.A.; and Does 1-10)
21 inclusive;)
22 Defendants)
23)
24)

**CERTIFICATE OF SERVICE RE:
CONSENT DECREE AND
[PROPOSED] ORDER**

1 **MC GUIREWOODS LLP**

2 Michael D. Mandel (admitted *pro hac vice*)
3 California Bar No. 216934
4 Bethany A. Pelliconi (admitted *pro hac vice*)
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9 California Bar No. 286368
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11 Los Angeles, CA 90067-1501
12 mmandel@mcguirewoods.com
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16 Attorneys for Defendants Bank of America Corporation
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18 Sheri M. Thome, Esq.

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20 Chad C. Butterfield, Esq.

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22 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**

23 300 S. Fourth Street, 11th Floor
24 Las Vegas, Nevada 89101
25 (702) 727-1400; FAX (702) 727-1401
26 sheri.thome@wilsonelser.com
27 chad.butterfield@wilsonelser.com

28 Attorneys for Defendants Bank of America Corporation
29 and Bank of America, N.A.

CERTIFICATE OF SERVICE

I am employed in the Legal Unit of the Los Angeles District Office of the United States Equal Employment Opportunity Commission. My business address is U. S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012. On the date that this certificate was executed, as shown below, I served: **CERTIFICATE OF SERVICE RE: CONSENT DECREE AND [PROPOSED] ORDER** via the Case Management/Electronic Case Filing (CM/ECF) system at Los Angeles CA., to:

Michael D. Mandel

Bethany A. Pelliconi

Lindsay L. Ryan

Sean M. Sullivan

McGuire Woods LLP

MMandel@mcguirewoods.com

BPelliconi@mcguirewoods.com

LRyan@mcguirewoods.com

SSullivan@mcguirewoods.com

Sheri M. Thome

Chad Butterfield

Wilson, Elser, Moskowitz, Edelman & Dicker LLP

sherithome@wilsonelser.com

chad.butterfield@wilsonelser.com

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 9, 2016 at Los Angeles, California.

/s/ *Nakkisa Akhavan*

Nakkisa Akhavan